

TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE MEETING ON DECEMBER 12, 2011
FROM:	P. McNALLY, P.ENG. EXECUTIVE DIRECTOR - PLANNING, ENVIRONMENTAL & ENGINEERING SERVICES
SUBJECT:	LIMITING DISTANCE (NO-BUILD) AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF LONDON & BARVEST REALTY INCORPORATED (725 THIRD STREET)

RECOMMENDATION

That on the recommendation of the Executive Director Planning, Environmental & Engineering Services, the following actions be taken in respect of a limiting distance (no-build) agreement between the Corporation of the City of London and Barvest Realty Inc. for the property at 725 Third Street:

- a) the Executive Director Planning, Environmental & Engineering Services **BE AUTHORIZED** to execute, on behalf of the City of London as the Adjacent Property Owner, a limiting distance (no-build) agreement for the property at 725 Third Street; and
- b) the attached proposed By-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting of January 10, 2012 to delegate authority to the Executive Director Planning, Environmental & Engineering Services to execute, on behalf of the City of London as the adjacent property owner, a limiting distance (no-build) agreement for the property at 725 Third Street.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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January 28, 2009 Report to Board of Control, submitted by the Director of Building Controls to amend the Appointment By-law authorizing the Chief Building Official to bind the Corporation of the City of London while exercising his duties in executing limiting distance agreements.

BACKGROUND

The purpose of this report is to authorize the Executive Director, Planning and Environmental Engineering Services to execute into a limiting distance agreement on behalf of the Corporation of the City of London as the owner of the adjacent property. The Corporation is the owner of the (open space) property to the west of 725 Third Street.

The owners of the building situated at 725 Third Street namely, Barvest Realty Inc. have applied for a building permit to build a 2,156 sq.ft. (200.3 sq. m) addition to their existing building used by Trudell Medical. The west exposed building face of the addition, due to its proximity to the property line, requires to be constructed with a 2-hour fire resistance rating as per the provisions of the Ontario Building Code (OBC).

The OBC provides relief of these construction requirements (i.e. 2-hour rating) by allowing for a virtual property line to be established. This requires that the affected owners enter into a limiting distance or otherwise commonly known as a "no-build" agreement with the municipality.

Through the agreement, one of the affected owners covenants that no building or structure will be erected or placed on the portion of the property wherein the virtual property line has been shifted upon. This, in essence, allows the other owner to construct a building closer to the actual property line and thus being 'relieved' from the requirements of the OBC with respect to how the wall is to be constructed from a fire resistance standpoint.

Barvest Realty Inc. , (referred in the agreement as 'Owner'), approached the Building Division with a proposal to enter into a "no-build" agreement which would eliminate the otherwise required fire resistance rating of 2 hours and essentially result in a more economically feasible wall design.

As previously mentioned, the OBC (Division B -Article 3.2.3.1 (8) allows for a municipality to enter into a "no-build" agreement with the property owners affected. The agreement is registered on the titles of the lands in question.

Article 3.2.3.1.(8) states:

(8) The required limiting distance for an exposing building face is permitted to be measured to a point beyond the property line that is not the centre line of a street, lane or public thoroughfare if,

(a) the owners of the properties on which the limiting distance is measured and the municipality enter into an agreement in which such owners agree that,

(i) each owner covenants that, for the benefit of land owned by the other covenantors, the owner will not construct a building on his or her property unless the limiting distance for exposing building faces in respect of the proposed construction is measured in accordance with the agreement,

(ii) the covenants contained in the agreement are intended to run with the lands, and the agreement shall be binding on the parties and their respective heirs, executors, administrators, successors and assigns,

(iii) the agreement shall not be amended or deleted from title without the consent of the municipality, and

(iv) they will comply with such other conditions as the municipality considers necessary, including indemnification of the municipality by the other parties, and

(b) the agreement referred to in Clause (a) is registered against the title of the properties to which it applies.

The Corporation of the City of London (referred in the agreement as 'Adjacent Owner'), is the owner of the property to the west. Considering the property is (zoned) open space, entering into a "no-build agreement" with Barvest Realty Inc. and the Corporation as the adjacent property owner is considered a feasible option that would result in the elimination of the 2-hour fire resistance rating of the west exposed building face of the addition and any future additions.

A site plan depicting the proposed addition is attached in Appendix 'B' and a copy of the "no-build agreement" is attached in Appendix 'C'.

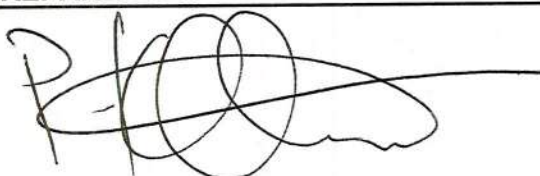


CONCLUSIONS

Previously, City Council has resolved to authorize the Chief Building Official to bind the Corporation in executing the limiting distance agreements, exercising his duties under the provisions of the Ontario Building Code.

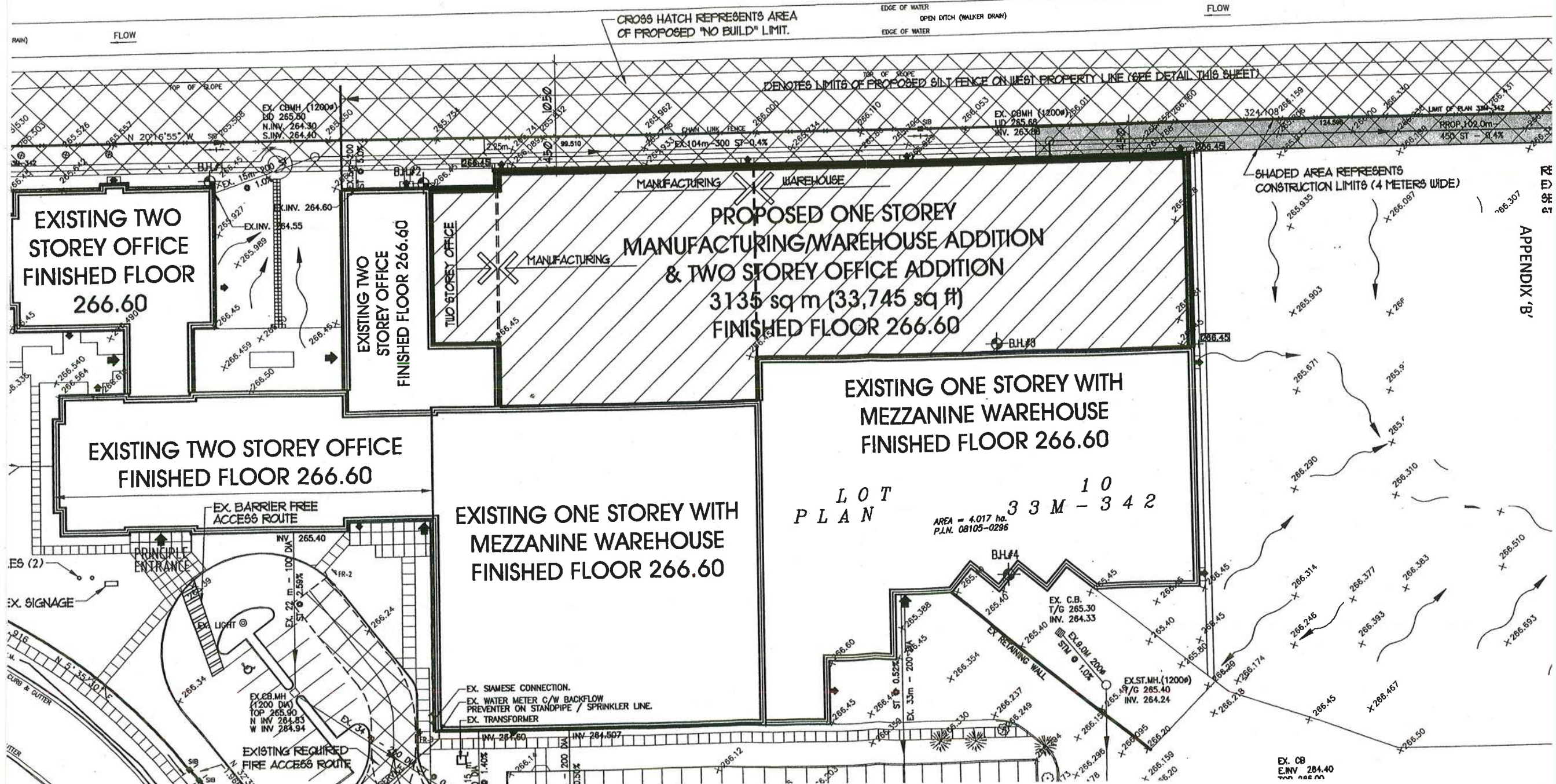
The purpose of this report is to authorize the Executive Director, Planning and Environmental Engineering Services to execute a limiting distance agreement on behalf of the Corporation of

the City of London in its capacity as the Adjacent Owner. The Corporation is the owner of the open space property to the west of 725 Third Street.

The agreement, a provision under the Building Code, would allow the owner of 725 Third Street to eliminate a required fire resistance rating of 2 hours and essentially result in a more economically feasible west wall design.

PREPARED BY:	SUBMITTED BY:
	
P. KOKKOROS, P.ENG. DEPUTY CHIEF BUILDING OFFICIAL MANAGER, BUILDING PERMITS	G.KOTSIFAS, P.ENG. CHIEF BUILDING OFFICIAL, DIRECTOR BUILDING CONTROLS
RECOMMENDED BY:	
	
PAT McNALLY, P.ENG. EXECUTIVE DIRECTOR - PLANNING, ENVIRONMENTAL & ENGINEERING SERVICES	

December 1, 2011
PK/pk



CROSS HATCH REPRESENTS AREA OF PROPOSED "NO BUILD" LIMIT.

EDGE OF WATER
OPEN DITCH (WALKER DRAIN)
EDGE OF WATER

FLOW

DENOTES LIMITS OF PROPOSED SILT FENCE ON WEST PROPERTY LINE (SEE DETAIL THIS SHEET)

SHADED AREA REPRESENTS CONSTRUCTION LIMITS (4 METERS WIDE)

PROPOSED ONE STOREY
MANUFACTURING/WAREHOUSE ADDITION
& TWO STOREY OFFICE ADDITION
3135 sq m (33,745 sq ft)
FINISHED FLOOR 266.60

EXISTING ONE STOREY WITH
MEZZANINE WAREHOUSE
FINISHED FLOOR 266.60

EXISTING ONE STOREY WITH
MEZZANINE WAREHOUSE
FINISHED FLOOR 266.60

EXISTING TWO
STOREY OFFICE
FINISHED FLOOR
266.60

EXISTING TWO
STOREY OFFICE
FINISHED FLOOR 266.60

EXISTING TWO STOREY OFFICE
FINISHED FLOOR 266.60

LOT
PLAN 33M-342
AREA = 4.017 ha.
P.L.M. 08105-0296

APPENDIX 'B'

EX. CB
INV. 264.40

Bill No.

By-law No.

A By-law to delegate authority to the Executive Director Planning, Environmental & Engineering Services to execute, on behalf of the City of London as the adjacent property owner, a limiting distance (no-build) agreement for the property at 725 Third Street.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 23(1) of the *Municipal Act, 2001* authorizes the municipality to delegate its powers and duties to a person;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to delegate authority to the Executive Director Planning, Environmental & Engineering Services to execute, on behalf of the City of London as the adjacent property owner, a limiting distance (no-build) agreement for the property at 725 Third Street;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Executive Director Planning, Environmental & Engineering Services is hereby delegated the authority to execute, on behalf of the City of London as the adjacent property owner, a limiting distance (no-build) agreement for the property at 725 Third Street.
2. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2011

Joe Fontana
Mayor

Catherine Saunders
City Clerk

First reading -
Second reading -
Third reading -

APPENDIX 'C'

INTRODUCTION TO NO-BUILD AGREEMENT

Barvest Realty Inc. owner of lands which requires the no-build agreement to allow for an unrated wall construction and glazed openings.

City of London adjacent property owner granting the no-build on their property.



THIS AGREEMENT made in duplicate this ____ day of ____, 2011.

BETWEEN:

Barvest Realty Inc.

(hereinafter called the "OWNER")

of the FIRST PART

- and -

THE CORPORATION OF THE CITY OF LONDON

(hereinafter called the "CITY")

of the SECOND PART

- and -

City of London

(hereinafter called "ADJACENT OWNER")

of the THIRD PART

WHEREAS the Owner is the registered owner of the lands described in Schedule "A" (the "Owners' Lands");

AND WHEREAS Adjacent Owner is the registered owner of lands described in Schedule "B" (the "Adjacent Lands");

AND WHEREAS the Owners' Lands abut and are immediately to the East of the Adjacent Lands;

AND WHEREAS the Owners have applied to the City for permission to be exempted from certain provisions of the Ontario Building Code pertaining to glazing and fire rating in the wall of a building constructed on the Owners' Lands;

AND WHEREAS the West face of the building will abut the Adjacent Lands;

AND WHEREAS the City wishes to ensure that no building or structure will be erected on the Adjacent Lands within 15.00 metres of the West face of the building on the Owners Lands;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of one dollar and other good and valuable consideration now paid by each of the parties hereto to the other, the receipt and sufficiency of which is hereby acknowledged, the City, the Owner and Adjacent Owner hereby covenant and agree as follows:

1. The Adjacent Owner irrevocably agrees with the Owner not to construct any building or structure within 15.0 metres of the West face of the Building on the Owners Land; failing which, the Adjacent Owner shall be fully liable for all costs of the work to be performed pursuant to the requirements of the Ontario Building Code.
2. The Adjacent Owner acknowledges and agrees that the 15.0 metre line as established by this agreement shall be the "limiting distance" for the purposes of the determining glazing or fire rating on the wall as required by the Ontario Building Code, of the West face of any building subsequently erect on the Adjacent Lands. *East*
W
3. For the purposes of this agreement "limiting distance" shall mean a line 15.0 metres from the West wall of the building on the Owners Lands.
4. This restriction shall run with the Owners' Lands and the Adjacent Lands and shall bind all Parties hereto, their successors and assigns.
5. The Owner covenant and agree with the City that the Owner will forthwith bring the west wall of the building into compliance, as are prescribed by the Ontario Building Code then in effect, coincidental with the construction of any building or structure upon the Adjacent Lands, which is within 15.0 metres of the west face of the building on the Owners Lands.
6. Removal of this agreement from the title of either property shall require the written agreement of all parties (or their heirs or assigns) to this agreement.

IN WITNESS WHEREOF the parties hereto have hereunto duly executed this agreement.

SIGNED, AND DELIVERED)
in the presence of:

) BARNETT REALTY INC
) (owner)
) per: [Signature]
) Authorized Officer
) per: [Signature]
) Authorized Officer

)
)
) THE CORPORATION OF THE CITY
) OF LONDON
) per: George Kotsifas, P.Eng.
)
) _____
) Authorized Officer

) per:
) _____
) Authorized Officer

) _____
) Adjacent Owner
) per:
) _____
) Authorized Officer
) per:
) _____
) Authorized Officer

SCHEDULE 'A'

Barvest Realty Inc. Lands are described as follows:

Lot 10 Plan 33M-342

SCHEDULE 'B'

Adjacent lands owned by the City of London are described as follows:

Part of south half of Lot 6, Concession 2 in the Geographic Township of London,
City of London and County of Middlesex as in Instrument No. 308657 (Secondly)